



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

0-4692
GERALD C. MANN
ATTORNEY GENERAL

Honorable R. A. McElrath
County Auditor
Cooke County
Gainesville, Texas

Dear Sir:

Opinion No. O-4692

Re: Do the Statutes authorize the Commissioners' Court of Cooke County to issue time warrants drawn on the General Fund for some future year to pay for an audit such as the one described, and related questions?

We have your letter of recent date requesting the opinion of this Department on the following questions:

"1. Do the statutes authorize the Commissioners' Court to issue time warrants drawn on the General Fund for some future year to pay for an audit such as the one proposed?

"2. Is the attempted levy of 1¢ on the one hundred dollar valuation of taxable property within the County for the year 1943, said levy having been made under date of February 9, 1942, a valid levy, and can time warrants be issued under the authority of this order without the publication of a notice of intention to issue such warrants?

"3. If time warrants are to be issued as proposed, under what should such warrants be designated?"

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It is apparent from the facts stated in your request and excerpts from the Commissioners' Court's minutes that said Court intended to contract for an audit of all the books of all the county officials, and to issue time warrants to pay for such audit. The contract for the audit was executed by the interested parties on the 8th day of March, 1942, and the audit was begun in the latter part of May, 1942, and is now in progress. The Commissioners' Court of Cooke County, Texas, passed an order authorizing an audit of all the books of all the county officials of said county for the period beginning January 1, 1940, to and including December 31st, 1942, at a price not to exceed \$600.00 per year, and authorized the County Judge to execute a contract on behalf of the Commissioners' Court. As above stated, the Commissioners' Court intended to issue time warrants to pay for said audit. The Court also passed an order levying a tax of 1¢ on the one hundred dollar valuation, of the constitutional 25¢ tax for General Fund purposes for the year 1943 to be set aside for the purposes of paying the obligation and to create a sinking fund to retire said indebtedness together with 3% interest thereon from date of issue until due.

The first question to be determined is: Does the Commissioners' Court of Cooke County have the legal authority to issue time warrants drawn on the General Fund to pay for an audit such as the one described? Article 1641, Vernon's Annotated Civil Statutes provides:

"Any commissioners court, when in its judgment an imperative public necessity exists therefor, shall have authority to employ a disinterested, competent and expert public accountant to audit all or any part of the books, records, or accounts of the county; or of any district, county or precinct officers, agents or employees, including auditors of the counties, and all governmental units of the county, hospitals, farms, and other institutions of the county kept and maintained at public expense, as well as for all matters relating to or affecting the fiscal affairs of the county. The resolution providing for such audit shall recite the reasons and necessity existing therefor such as that in the judgment of said court there exists official misconduct, willful omission or negligence in records and reports, misapplication,

conversion or retention of public funds, failure in keeping accounts, making reports and accounting for public funds by any officer, agent or employe of the district, county or precinct, including depositories, hospitals, and other public institutions maintained for the public benefit, and at public expense; or that in the judgment of the court, it is necessary that it have the information sought to enable it to determine and fix proper appropriation and expenditure of public moneys, and to ascertain and fix a just and proper tax levy. The said resolution may be presented in writing at any regular or called session of the commissioners court, but shall lie over to the next regular term of said court, and shall be published in one issue of a newspaper of general circulation published in the county; provided if there be no such newspaper published in the county, then notice thereof shall be posted in three public places in said county, one of which shall be at the court house door, for at least ten days prior to its adoption. At such next regular term said resolution shall be adopted by a majority vote of the four commissioners of the court and approved by the county judge. Any contract entered into by said commissioners court for the audit provided herein shall be made in accordance with the statutes applicable to the letting of contracts by said court, payment for which may be made out of the public funds of the county in accordance with said statutes. The authority conferred on county auditors contained in this title as well as other provisions of statutes relating to district, county and precinct finances and accounts thereof shall be held subordinate to the powers given herein to the commissioners' court."

It will be noted that Article 1641, supra, expressly provides that payment for an audit made under the provisions of said statute may be made out of the public funds of the county. This statute does not authorize the Commissioners' Court to issue bonds or time warrants for the purpose of paying for the audit authorized by Article 1641, supra. We have been unable to find any other statute authorizing the county

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to issue bonds or time warrants for such a purpose. The statute under consideration expressly authorizes the Commissioners' Court to contract for the audit provided therein and pay for the same out of the public funds of the county. All county expenditures lawfully authorized to be made by the county must be paid out of the county's General Fund unless there is some law which makes them a charge against a Special Fund. (Bexar County vs. Mann, 157 S. W. (2) 134, citing Williams vs. Carroll, 162 S. W. 29) We have failed to find any statute making the expenditures authorized by Article 1641, supra, a charge against any special fund. Therefore, any expenditures authorized by said statute would have to be paid out of the county's General Fund.

In connection with your first question, we have carefully considered the cases of Adams vs. McGill, 146 S. W. (2) 332 and Bexar County vs. Mann, supra, and do not think that these cases are authority authorizing the issuance of time warrants against the General Fund of the county for purposes above mentioned. The statute under consideration in the Bexar County case, supra, expressly authorized the Commissioners' Court to issue bonds and certificates of indebtedness, warrants, or other obligations to be used for the purposes mentioned in the statute (Article 2997a, Vernon's Annotated Civil Statutes). As the above pointed out, Article 1641, supra, does not authorize the Commissioners' Court to issue bonds, certificates of indebtedness or time warrants to be used for the purposes mentioned in said statute.

The statutes (Articles 2368a, 2372b, Vernon's Annotated Civil Statutes) under consideration in the case of Adams vs. McGill, supra, did not expressly confer the power upon the Commissioners' Court to issue time warrants to pay for the improvements constructed, but the El Paso Court of Civil Appeals held that the Commissioners' Court had implied power to issue time warrants over a period of three years for the construction of a livestock and agricultural exhibition building. In this case, the Court stated, in effect, in the cases of erection of courthouses, jails, and the construction of public roads, it has been often held that the county has the implied power to issue time warrants to pay for the same. As we understand the

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Adams case, supra, Article 2372d, supra, did not expressly authorize the Commissioners' Court to issue bonds or warrants for the payment of improvements authorized by said statute but the bond and warrant law, (Article 2368a, Vernon's Annotated Civil Statutes) in effect authorized the issuance of bonds and regulated and limited the issuance of time warrants for the purposes authorized by Article 2372d, supra. We do not think that Article 2368a, supra, authorizes the issuance of bonds or warrants for the purpose set out in Article 1641, supra. Therefore, it is our opinion that the Commissioners' Court of Cooke County has no legal authority to issue time warrants against the General Fund of the county for that purpose.

Since we have held that the Commissioners' Court does not have any legal authority to issue time warrants for the purpose above mentioned, your other questions become moot and require no further consideration.

It is to be understood that we are not attempting to pass on the validity of the contract mentioned in your inquiry or the orders of the Commissioners' Court relative thereto in this opinion, nor do we express any opinion as to the type or kind of warrants issued by the court for the payment of the audit under consideration.

Trusting that the foregoing fully answers your inquiry, we are

Yours very truly

ATTORNEY GENERAL OF TEXAS

By *Ardell Williams*

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Gerrald. Mann

